

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES McCONICO, JR.,	:	
Plaintiff,	:	
vs.	:	CIVIL ACTION 06-0023-KD-B
UNITED STATES CONGRESS,	:	
Defendants.	:	

ORDER

On February 15, 2006 the Magistrate Judge entered a Report and Recommendation that this plaintiff's motion to proceed without prepayment of fees be denied and that this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g). (Doc. 6) Specifically, the Magistrate concluded that plaintiff, a "three striker", did not pay the requisite \$250.00 filing fee at the time the action was filed and had failed to show that he met the "imminent danger of serious physical injury" exception of 28 U.S.C. § 1915(g). (Id. at 5)

On March 8, 2006 plaintiff filed an objection on the grounds, in sum, that he is not required to show "imminent danger of serious physical injury" since that is a "statutory constructed one that constitutional claims compelling declaration and injunctive relief against the threatened invasion of a constitutional right does not require proof of any injury other than the threatened constitutional deprivation itself." (Doc. 7) Specifically, plaintiff objects "that his access to court claim is governed by a test a actual legal injury to litigation." (Id. at 2) Plaintiff further objects to the application of "the PLRA injury provision retroactive[ly] [] to deny

[plaintiff] access to court on his deprivation of liberty civil claim.” (Id at 3)

28 U.S.C. 1915(g) restricts a prisoner from bringing a civil action “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action...that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, *unless the prisoner is under imminent danger of serious physical injury.*” Plaintiff clearly falls within this provision, having filed multiple actions in this court and having previously been advised that any further pleadings of this nature would require that he allege “an imminent danger of serious physical injury”. (Doc. 6 at 4) Accordingly, plaintiff’s objections are OVERRULED.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is ADOPTED as the opinion of this Court. It is ORDERED that plaintiff’s Complaint be and is hereby DISMISSED with prejudice pursuant to 28 U.S.C. § 1915(g).

DONE this the 14th day of March 2006.

/s/ Kristi K. DuBose

KRISTI K. DuBOSE

UNITED STATES DISTRICT JUDGE